

Application for Search and Seizure Warrant

**UNITED STATES DISTRICT COURT**  
 for the  
 Western District of Washington

	FILED	LODGED
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	Jan 11, 2021	
	CLERK U.S. DISTRICT COURT	
	WESTERN DISTRICT OF WASHINGTON AT TACOMA	
	BY _____ DEPUTY	

**In the Matter of the Search of:**  
 Brandon Allen Nemec

**Case No.** MJ21-5005

**APPLICATION FOR A SEARCH WARRANT FOR BLOOD SAMPLE**

I, Ernest M. Brunzelle, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that a sample of blood consisting of one or more tubes or vials should be taken from the following person:

Brandon Allen Nemec

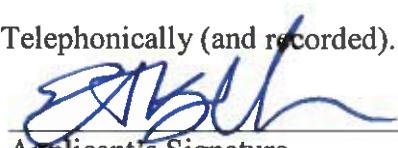
located in the Western District of Washington and that this blood sample is evidence of the following crime or crimes.

- Driving While Under the Influence in violation of RCW 46.61.502, 18 U.S.C. § 13, and 36 C.F.R. § 4.23 or 38 C.F.R. § 1.218
- Physical Control of a Vehicle While Under the Influence of Alcohol or Drugs in violation of RCW 46.61.504, 18 U.S.C. § 13, and 36 C.F.R. § 4.23 or 38 C.F.R. § 1.218
- Driver under Twenty-One Consuming Alcohol or Marijuana in violation of RCW 46.61.503 and 18 U.S.C. § 13
- Vehicular Homicide in violation of RCW 46.61.520 and 18 U.S.C. § 13
- Vehicular Assault in violation of RCW 46.61.524 and 18 U.S.C. § 13
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This application is based on the facts set forth in the attached affidavit which is incorporated herein as if fully set forth.

Pursuant to Fed. R. Crim. P. 4.1 & 41(d)(3), this warrant is presented:

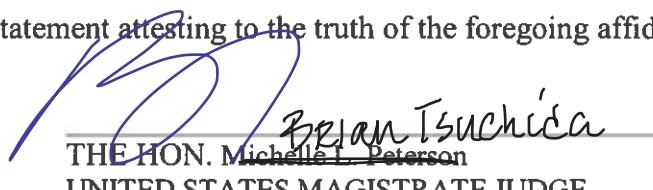
- By reliable electronic means.
- Telephonically (and recorded).



Applicant's Signature

Ernest M. Brunzelle, Police Officer, JBLM Police

The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit by telephone on this 10 day of January, 2021.



THE HON. Michelle L. Peterson

UNITED STATES MAGISTRATE JUDGE

1 STATE OF WASHINGTON )  
2 ) ss  
3 COUNTY OF PIERCE )

4 AFFIDAVIT OF ERNEST M. BRUNZELLE

5 I, Ernest M. Brunzelle, a Police Officer with Joint Base Lewis McChord Police  
6 Department, Joint Base Lewis McChord, Washington, having been duly sworn, state as  
7 follows:

8 AFFIANT BACKGROUND

9 1. I have served as a law enforcement officer for the past 8 years. My training  
10 and experience relevant to the investigation discussed below includes the following:

11  Basic Training at the Federal Law Enforcement Training Center  
12  Basic Law Enforcement Academy at the Washington Criminal  
13 Justice Training Commission  
14  Standardized Field Sobriety Testing  
15  Advised Roadside Impaired Driving Enforcement Training

16 2. The information presented in this affidavit is:

17  Based on my personal observations and interviews that I have  
18 conducted.  
19  Based on the personal observations and interviews conducted by  
20 Military Police Specialist Derreck M. Fleming who has 2 years of  
21 experience as a Military Police Officer and Department of the Army  
22 Civilian Police Sergeant Tyreise A. Dean who are Police Officers  
23 with the Joint Base Lewis McChord Police Department. I have  
24 learned that Military Police Specialist Derreck M. Fleming has  
25 received training at the United States Army Military Police School  
26 and Sergeant Tyreise A. Dean has received the following relevant  
27 training and has over 15 years of experience as a law enforcement  
officer, and is currently certified in Standardized Field Sobriety Test  
to National Highway Traffic Safety Administration standards,  
certified in Advanced Roadside Driving Enforcement, and  
Washington Advanced Collision Investigations.

28 INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

1       3. The purpose of this affidavit is to seek a search warrant to authorize me or  
2 other law enforcement officers to direct a physician, a registered nurse, a licensed  
3 practical nurse, a nursing assistant as defined in Chapter 18.88A of the Revised Code of  
4 Washington (RCW), a physician assistant as defined in chapter 18.71A of the RCW, a  
5 first responder as defined in chapter 18.73 of the RCW, an emergency medical technician  
6 as defined in chapter 18.73 of the RCW, a health care assistant as defined in chapter  
7 18.135 of the RCW, or any technician trained in withdrawing blood to extract a blood  
8 sample consisting of one or more tubes or vials from Brandon Allen Nemec (hereafter  
9 "the Subject"). This warrant is requested for the purpose of gathering evidence of the  
10 following crime(s):

- Driving While Under the Influence in violation of RCW 46.61.502, 18 U.S.C. § 13, and 36 C.F.R. § 4.23 or 38 C.F.R. § 1.218
- Physical Control of a Vehicle While Under the Influence of Alcohol or Drugs in violation of RCW 46.61.504, 18 U.S.C. § 13, and 36 C.F.R. § 4.23 or 38 C.F.R. § 1.218
- Driver under Twenty-One Consuming Alcohol or Marijuana in violation of RCW 46.61.503 and 18 U.S.C. § 13
- Vehicular Homicide in violation of RCW 46.61.520 and 18 U.S.C. § 13
- Vehicular Assault in violation of RCW 46.61.524 and 18 U.S.C. § 13
-

4. I am seeking to present this application for a search warrant by electronic means because the natural metabolism of alcohol or drugs in the bloodstream may result in the loss of this evidence in the time it would take to present a search warrant application in a more traditional fashion.

## SUMMARY OF PROBABLE CAUSE

5. As a result of my duties I am familiar with the jurisdictional boundaries of Joint Base Lewis McChord, Washington. The incident described below occurred within these jurisdictional boundaries, an area within the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. § 7.

1       6.     The initial contact with the Subject occurred on 01/10/2021 at  
2 approximately at 1840 Hrs on North Gate Rd, Joint Base Lewis McChord, Washington  
3 by Military Police Specialist Fleming.

4

5     The Joint Base Emergency Communications Center received a 911 telephone call from a  
6     passerby for a rollover accident on North Gate Rd. JBLM Police Military Police  
7     Specialist Derrick M. Fleming arrived on scene at approximately 1840 Hrs and made  
8     contact with Mr. Brandon Allen NEMEC, who was identified as the driver of the vehicle.  
9     Investigation at the scene revealed that Mr. NEMEC was traveling southbound on North  
10    Gate Rd. at a high rate of speed when he lost control of his vehicle in a curve and struck  
11    an embankment on the side of the road, before coming to a rest back in the roadway.  
12    Injuries were sustained by Mr. NEMEC and his ten year old son, who was seated in the  
13    right front passenger seat. Mr. NEMEC collapsed at the scene before regaining  
14    consciousness, and was transported to the Madigan Medical Center Emergency room by  
15    ambulance, along with his son.

16    Based on my training and experience, I believe the Subject may be under the influence of  
17    intoxicants or drugs for the following reasons: Further Investigation at the scene  
18    revealed an open container of alcoholic beverage “buzz ball” in the passenger cabin of  
19    the vehicle on the passenger side window of the overturned vehicle.

20    During the ride to the hospital, Mr. NEMEC made several spontaneous utterances to  
21    Military Police Specialist Fleming and JBLM Paramedics stating that he was speeding to  
22    show off for his son, as well as “who doesn’t drink and drive with their child in the  
23    vehicle.” Once at the hospital, I spoke with Mr. NEMEC, who initially was cooperative,  
24    and signed the Washington State DUI request for voluntary blood sample, stating to me  
25    “Of course I will consent to a blood test, I was drinking and driving with my son in the  
26    vehicle, I need to be responsible” before becoming upset with a nurse and stating that he  
27    wanted a lawyer, then stating that he would make the police get a warrant because “the  
28    alcohol will be out of my system by then.” Mr. NEMEC appeared to be disoriented at

1 times, and was looking for his son, who had been taken to imaging after witnessing him  
 2 leave, and being told by hospital staff where he was going. Mr. NEMEC also became  
 3 upset with hospital staff and threatened to have at least "three of you leaving here  
 4 limping" if he was not strapped down to the bed, which he was not due to a Madigan  
 5 doctor's request. Mr. NEMEC repeatedly attempted to sit up and move around the  
 6 hospital bed despite being told to remain in a prone position by his doctor and nurses.

7

8 7. The Subject:

- 9  Has refused to take a breath Alcohol test on an instrument approved by  
   10 the State Toxicologist or a federal agency for such breath testing.
- 11  Is being treated in a hospital, clinic, doctor's office, emergency medical  
   12 vehicle, ambulance, or other similar facility, or is at a location that lacks  
   13 an instrument approved by the State Toxicologist or a federal agency for  
   14 performing such breath testing, and has refused to submit to a blood  
   15 test.
- 16  Is incapable due to physical injury, physical incapacity, or other  
   17 physical limitation of submitting to a breath alcohol test, and the  
   18 defendant has refused to submit to a blood test.
- 19  Has refused to submit to a blood test at the request of the undersigned.
- 20  Was not offered an opportunity to take a breath alcohol test on an  
   21 instrument approved by the State Toxicologist or a federal agency for  
   22 such breath testing because:
  - 23    The available instrument is currently out of order
  - 24    The individual does not speak English and the implied consent  
   25   warnings are not available in a language that the defendant  
   26   understands
  - 27    \_\_\_\_\_
  - 28    Submitted to a breath test on an instrument approved by the State  
   29   Toxicologist or a federal agency for such breath testing but the breath  
   30   alcohol concentration reading of xx **BAC LEVEL** is not consistent with  
   31   the defendant's level of impairment suggesting that the defendant is  
   32   under the influence of a drug.

8. A sample of blood extracted from the Subject if taken within a reasonable period of time after he/she last operated, or was in physical control of, a motor vehicle, may be tested to determine his/her current blood alcohol level and to detect the presence of any drugs that may have impaired his/her ability to drive. This search warrant is being requested within **four** hours and twenty minutes after the Subject ceased driving or was found in physical control of a motor vehicle.

## CONCLUSION

9. For the reasons stated above, I request authority to direct a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A of the RCW, a physician assistant as defined in chapter 18.71A of the RCW, a first responder as defined in chapter 18.73 of the RCW, an emergency medical technician as defined in chapter 18.73 of the RCW, a health care assistant as defined in chapter 18.135 of the RCW, or a technician trained in withdrawing blood to extract a blood sample consisting of one or more tubes or vials from Brandon Allen Nemec.

10. This application for a warrant is being presented electronically pursuant to Fed. R. Crim P. 4.1 & 41(d)(3).

I certify (or declare) under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated this 10 day of January, 2021.

Ernest M. Brunzelle, Affiant  
Police Officer, JBLM Police Department

The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit on 10 day of January, 2021. 

Brian Tsuchida  
THE HON. MICHELLE L. PETERSON  
UNITED STATES MAGISTRATE JUDGE